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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sheila Kinzer,

10 Plaintiff,

11 v.

12 Michael J. Astrue,

13 Defendant.
14

No. CV-11-00328-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff's Application for Attorney Fees Under the
16 Equal Access to Justice Act (Doc. 33). The Court now rules on the motion.

17 **I. Background**

18 On April 27, 2009, an Administrative Law Judge ("ALJ") denied Plaintiff's
19 request for Social Security benefits. After exhausting her administrative appeals, Plaintiff
20 filed this lawsuit in appeal of the ALJ's decision. The Court affirmed the ALJ's finding
21 that Plaintiff was not disabled. Plaintiff appealed to the Ninth Circuit Court of Appeals
22 ("Court of Appeals"), which reversed the Court's decision and remanded this case with
23 instructions for the Court to remand to the Commissioner of Social Security (the
24 "Commissioner") for further proceedings.

25 Plaintiff has now filed an application for attorneys' fees under the Equal Access to
26 Justice Act ("EAJA"). (Doc. 33).

27 **II. Legal Standard**

28 The Court of Appeals has succinctly stated the legal standard for an award of fees

1 under EAJA:

2 EAJA provides that a court shall award to a prevailing party
3 other than the United States fees and other expenses incurred
4 by that party in any civil action unless the court finds that the
5 position of the United States was substantially justified or that
6 special circumstances make an award unjust. It is the
7 government's burden to show that its position was
8 substantially justified. Substantial justification means justified
9 in substance or in the main—that is, justified to a degree that
10 could satisfy a reasonable person. Put differently, the
11 government's position must have a reasonable basis both in
12 law and fact. The position of the United States includes both
13 the government's litigation position and the underlying
14 agency action giving rise to the civil action. Thus, if the
15 government's underlying position was not substantially
16 justified, we must award fees and need not address whether
17 the government's litigation position was justified.

18 *Tobeler v. Colvin*, 749 F.3d 830, 832 (9th Cir. 2014) (citations, quotation marks, and
19 alterations omitted).

20 **III. Analysis**

21 The Government correctly points out that the standard of review applied to the
22 Commissioner's decision to deny benefits is not the same as the distinct question of
23 whether the Government's position in this case was substantially justified for EAJA
24 purposes. (Doc. 37 at 2). A reviewing court "may set aside a denial of disability benefits
25 only if it is not supported by substantial evidence or if it is based on legal error." *Thomas*
26 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). Thus, an ALJ's decision, if not legally
27 erroneous, need be supported only by substantial evidence in the record. This contrasts
28 with the EAJA standard for an award of attorneys' fees, under which the Government
must show that its position was "substantially justified."

29 The Government argues that its position was substantially justified because
30 although ultimately incorrect, it had a reasonable basis in the law. (Doc. 37 at 4-5). The
31 ALJ discounted the opinions of Drs. Ross and Biscoe, Plaintiff's treating physicians,
32 finding that their opinions were not supported by the other evidence in the record. The
33 ALJ failed to specifically cite the objective record evidence supporting the discounting of
34 these opinions, but on appeal, the Court found substantial record evidence supported the

1 ALJ's decision. The Court of Appeals concluded that the ALJ committed legal error by
 2 failing to specifically cite the record evidence justifying the discounting of these
 3 opinions. (Doc. 29-1 at 2-3).

4 Thus, although the Government contends that the ALJ's position was substantially
 5 justified, the Court of Appeals has determined that the ALJ's position was erroneous as a
 6 matter of law.¹ The fact that the ALJ's decision to discount the opinions of Drs. Ross and
 7 Biscoe is supported by substantial record evidence is irrelevant in light of the Court of
 8 Appeals' ruling, and therefore the Government's efforts to demonstrate the
 9 reasonableness of the ALJ's decision are to no avail. *See* (Doc. 37 at 5-10). Therefore, the
 10 Court must conclude that the Government's position was not substantially justified. The
 11 Court will award Plaintiff \$19,800.57 in attorneys' fees.²

12 **III. Conclusion**

13 For the foregoing reasons,

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 24 ¹ The Court of Appeals held that the ALJ committed three errors, (Doc. 29-1 at 2-
 25 3), but this error is itself sufficient to render the Government's position not substantially
 justified.

26 ² Plaintiff asserts in her reply that she is entitled to EAJA fees for "the pursuit of
 27 EAJA fees" and cites *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002) for this proposition.
 28 Plaintiff does not provide a pincite to the particular pages in *Gisbrecht* that support her
 argument. This failure renders Plaintiff's argument inadequate and the Court will not
 award fees incurred in preparing the reply in support of Plaintiff's motion. It is Plaintiff's
 responsibility to provide adequate citations to legal authority. Nevertheless, the Court has
 reviewed *Gisbrecht* and cannot locate such a citation for counsel.

1 **IT IS ORDERED** granting Plaintiff's Application for Attorney Fees Under the
2 Equal Access to Justice Act (Doc. 33).

3 **IT IS FURTHER ORDERED** awarding Plaintiff \$19,800.57 in attorneys' fees.
4 This award shall be payable directly to Plaintiff and is subject to offset to satisfy any
5 preexisting debt that Plaintiff owes the United States pursuant to *Astrue v. Ratliff*, 560
6 U.S. 586, 594 (2010).

7 Dated this 6th day of April, 2015.

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12 James A. Teilborg
13 Senior United States District Judge
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